February 14, 2005

Jonathan Trout
Secretary /Treasurer
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, Kentucky 40204-1745

RE: Strategic Toxic Air Reduction (STAR) Program

Dear Mr. Trout:

The National Paint & Coatings Association (NPCA) is a voluntary, nonprofit trade association representing some 350 manufacturers of paints, coatings, adhesives, sealants and caulks, raw materials suppliers to the industry, and product distributors. As the preeminent organization representing the coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on legislative, regulatory and judicial issues at the federal, state, and local levels. In addition, NPCA provides members with such services as research and technical information, statistical management information, legal guidance, and community service project support.

As the industry representative for many paint and coating manufacturers in Kentucky as well as raw material suppliers in the State, NPCA has serious concerns with the Louisville Metro Air Pollution Control District (District) proposed Strategic Toxic Air Reduction Program (STAR) regulations. On October 6, 2004, NPCA supplied the District with preliminary comments on STAR, which we had hoped the District would give due consideration. However, it appears that the District has not only disregarded our initial suggestions, but those of other similarly situated stakeholders as well. In fact, over the last six months, NPCA, through its Kentucky Paint Council (KPC), has participated in the Greater Louisville Inc.'s (GLI) Environmental Affairs Committee's efforts to work with the District to produce sound and fair regulations in this regard. It appears, however, that the District favors an arbitrary timeline in promulgating these regulations over sound and technically feasible final rules. In conjunction with the Kentucky Paint Council's comments, as well as the Greater Louisville Inc.'s alternative proposal, which NPCA fully supports, NPCA again reiterates its objection to the current proposal for the following reasons.

The proposed regulations are overly broad, granting unprecedented authority to the District and imposing significant burdens on industry, many of which, in the paint and coatings industry, are small businesses. In addition, it does not appear that the District has addressed the considerable overlap the proposed STAR regulations have on existing regulations and guidelines, both at the state and federal level. Finally, the District proposes not only rigid and costly control requirements, but onerous recordkeeping and reporting requirements as well – all without evidence of commensurate environmental benefit.

The proposed regulations appear to grant an unprecedented level of regulatory authority to the District that NPCA believes is not only unjustified, but impracticable. For example, in Regulation 1.06, Section 1 and 2, give the District authorization to require the installation, operation and maintenance of stack gas measuring, emission monitoring, and parametric monitoring on *any* owner or operator of a process or process equipment and to require such in accordance with methods, frequencies and reporting intervals *prescribed by the District* (emphasis added). Similarly, in Regulation 5.21, Section 4, the District is given authority to impose varying degrees of monitoring, recordkeeping and reporting requirements on any stationary source on an accelerated schedule if it determines that the concentration of a toxic air contaminant is, *or may be*, greater than an environmentally acceptable standard (emphasis added). In another example, Regulation 1.20, Section 1 states that the District can impose a malfunction prevention program on a source where a malfunction involving the process or process equipment *may* have occurred (emphasis added). However, the proposed regulations do not specify how the District would make these determinations. Regulations can not be arbitrarily imposed, on the contrary, specific applicability requirements for implementation and compliance assurance must be clearly defined.

Furthermore, the proposed regulations give the District retroactive authority. The reporting requirements under Regulation 1.06 mandates enhanced emission inventory information and analyzes for "Group 1" stationary sources by July 15, 2005 for the 2004 calendar year. Thus, the requirements of the STAR program, officially proposed January 2005 would retroactively apply to January of 2004. Not only is this retroactive authority unprecedented, it is infeasible. The proposed regulations do not address how a stationary source without the requisite needed information for 2004 would be able to comply with the regulation. In addition, as the regulation has already changed through informal notice and comment, and is apt to be changed again as a result of this formal comment period, sources will not have actual notice until a rule is finalized sometime in the future. Thus, the compliance schedule should be adjusted accordingly. Regulations can not be imposed without adequate notice and comment and the regulated community can not be expected to implement requirements retroactively.

The significant burdens placed by these overly broad regulations are particularly damaging to small business interests. A clear understanding of the regulations is all the more important considering the type of facilities these standards may regulate – not only large facilities, but area sources as well, many of which are small businesses. Approximately 90% of coating manufacturing facilities are small businesses by the Small Business Administration's definition and 61% of the industry has fewer than 20 employees. It is therefore not only critical to the industry as a whole, but to small businesses as well, that interested parties be given the information and compliance assistance on the rulemaking with enough time to adequately respond and implement the rule. These regulations will place stringent and costly air pollution control requirements on these small businesses and the District has continuously ignored attempts by industry to provide input and alternative mechanisms to achieve the benefit envisioned by the program.

For example, Regulation 5.23, Section 2 lists certain EPA Toxic Release Inventory (TRI) chemicals as category 2 Toxic Air Contaminants. The mere fact that these chemicals are listed under the TRI program and the use of EPA risk-Screening Environmental Indicators (RSEI) Full

Model Relative Risk Scores equal to or greater than 500 is not sufficient justification to list these chemicals as "Category 2B Toxic Air Contaminants" under STAR. These chemicals are not listed as Hazardous Air Pollutants by EPA, yet as Category 2 Toxic Air Contaminants it appears that these chemicals are more toxic than the Category 3 Toxic air Contaminants, which are the Clean Air Act listed HAPs. In addition, what is the basis for the 500 RSEI level? Have the model results been released or peer reviewed? Even EPA recognizes the following limitations with the RSEI model:

- RSEI results do not provide users with quantitative risk estimates (excess cases of cancer)
- The model assumes that air concentrations of TRI chemicals are the same for indoor and outdoor exposures, and that the populations are continuously exposed (this is not the case as most facilities do not run 24/7)

Yet, the District does not appear to take this into consideration. Finally, the RSEI modeling and the list are based on 2001 TRI data. In general, TRI releases have been decreasing over time, in fact, TRI releases in 2002 were 15% less than 2001 alone. Additional decreases since 2001 must be analyzed in order for a clear determination to be made that listing these chemicals for inclusion in the STAR program will actually provide the benefits envisioned by the program.

Also, in previous versions, the District did not address the overlap the proposed regulations would have with other state and federal regulations. While the current version gives lip service to such, it is clear that the District still has not given due consideration in this regard. Specifically, the District has defined terms and imposed requirements that are in direct conflict with Environmental Protection Agency (EPA) and Occupational Health and Safety (OSHA) guidance and regulation. The District's new definition of ambient air, excess emissions, uncontrolled emissions, major source, and start-up, shut-down and malfunction provisions do not comport with EPA's definitions and provisions in existing National Ambient Air Quality Standards and National Emission Standards for Hazardous Air Pollutants. In addition, some of the provisions in the proposed regulations duplicate existing EPA and OSHA recordkeeping and recording requirements, in direct conflict with paperwork and burden reduction policies. It is clear that the District continues to dismiss stakeholders' concerns in this regard and still has not taken into account the state and federal rules that currently exist and are statutorily mandated while developing these proposed regulations. In addition to state and local volatile organic compound (VOC) facility and product regulations that have been instituted over the last decade, EPA more recently promulgated maximum achievable control technology (MACT) standards for hazardous air pollutants (HAPs), not only for the paint and coatings industry, but for the chemical industry (our raw material suppliers), for the surface coating industry (our customers) as well as a whole host of other source categories.

Yet, existing and validated federal emission estimation techniques are not fully recognized under STAR. In Regulation 1.06, Section 3, the District specifies that EPA method AP42, other methods defined in the EPA-approved District regulations, stack test or CEMS data, or other procedures proposed by the owner or operation and approved in writing by the District must be used for the purposes of complying with the regulation's emission estimation requirements. In the same section, the District mandates that emissions data required by the regulation include process or process-equipment specific calculations. As NPCA has pointed out in previous

comments, EPA's method AP42 is not process specific, but facility based. Furthermore, EPA's own Emissions Inventory Improvement Program (EIIP) guidance disfavors AP42 over specific process-specific emission inventory equations when detailing emission inventories. The EIIP has established numerous industry specific chapters, including Chapter 8 for the Paint and Coatings sector and Chapter 16 for batch chemical processes, in order to provide more accurate estimation techniques based on manufacturing processes. The District should specifically recognize EPA's EIIP in the STAR program as it encompasses all EPA approved emission estimation techniques, without the need for written request and prior approval. These and other emission estimation equations specifically mandated in MACT regulations for the various source categories should not have to undergo re-evaluation under STAR.

Another example of how the District is not adequately accounting for existing federal regulations is STAR's Leak Detection and Repair (LDAR) standards. The MACT standards, including the Miscellaneous Organic Chemical and Miscellaneous Coatings Manufacturing MACTs already have stringent LDAR standards. These standards have been promulgated in order to produce the "maximum" amount of reduction in air pollution emissions and they have been promulgated under an exacting process for each MACT industry category. In the paint and coatings industry, it was determined that air emissions from LDAR sources constituted what amounted to a de minimus level of emissions. Thus, under the Miscellaneous Coatings Manufacturing MACT, a sensory LDAR program is all that is necessary to maintain maximum achievable air emission limitations. Under STAR, however, a paint and coatings facility would now have to implement a costly and time consuming instrument LDAR – unnecessarily diverting resources and attention away from actual emission sources. The District's unwavering inattention to these and other overlapping existing regulations puts unwarranted and expensive requirements on industry for little to no environmental benefit.

Furthermore, under the CAA our industry as well as other stakeholders affected by the proposed STAR program, will next be regulated under federal area source standards as well as residual risk analyses of the MACT standards. The District must also take into account future regulations that will impact the goals of the STAR program. Without a coordinated and flexible approach for these rulemakings, it is impossible for industry to determine how best to comply with the regulations from an economic and technical standpoint. Without a uniform approach, duplicative regulatory burdens are needlessly placed on industry. Simply put, without taking into consideration and addressing the gains and burdens the STAR program will have in relation to the other state and federal air program requirements, the District imposes rigid and costly requirements on the regulated community, without the commensurate environmental benefit.

NPCA is please to provide these comments and to support comments submitted by the KPC and GLI. Unfortunately, no real progress was made on the proposed regulations during the first informal notice and comment period. NPCA urges the District to take a different approach this time around and work with the regulated community and other stakeholders to promulgate fair and achievable final rules. The proposed STAR program will place significant burdens on industry, particularly on small businesses, and as proposed provides no assurance that its environmental goals will actually be met. GLI's alternate proposal, however, provides a sound basis for achieving the air quality goals envisioned by the District, without placing excessive burden on industry. Without a comprehensive and coordinated approach, taking into account

current and future federal and state air regulations as well as appropriate implementation schedules, the District merely places unwarranted and costly restrictions on business without commensurate environmental benefit. In advance, NPCA thanks the District for its consideration of these comments and looks forward to an open dialogue in resolving these issues.

Sincerely,

/s/

Alison Keane, Esq.
Counsel, Government Affairs

/s/

David Darling, P.E.
Director, Environmental Affairs

** *Sent via facsimile and regular mail* **

- Sent electronically 2/22/05 -